

**REMARKS**

Entry of the foregoing, reexamination and further and favorable reconsideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.116, are respectfully requested.

**Introduction**

The Office Action Summary correctly indicates that claims 40-42, 44, 46, 47, 51-58 and 60 are pending in the application. All claims are directed to the elected invention. Claims 40-42, 44, 46, 47, 51-58 and 60 are under consideration and stand rejected.

By the present amendment, claims 42, 44, 57, 58 and 60 have been canceled without prejudice or disclaimer of the subject matter described therein. Applicant reserves the right to file one or more continuation application(s) directed to any of the canceled subject matter. Further, claim 40 has been amended for grammatical purposes. Support for the amendment to claim 40 may be found throughout the specification and claims as originally filed. No prohibited new matter has been introduced by way of the above amendments. Applicant reserves the right to file a continuation or divisional application on subject matter canceled by way of this Amendment.

**Rejections under 35 U.S.C. § 112**

Claims 42, 44, 57, 58 and 60 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to satisfy the written description requirement. Applicant respectfully maintains that the specification and claims as originally filed describe the subject matter recited in claims 42, 44, 57, 58 and 60 such that one skilled in the art would appreciate that Applicant had possession of that subject matter. However, to expedite prosecution in the application and not to acquiesce to the Examiner's rejection, claims 42, 44, 57, 58 and 60

have been canceled without prejudice or disclaimer. This rejection is therefore rendered moot. Accordingly, withdrawal of this written description rejection is respectfully requested.

**Rejections under 35 U.S.C. § 103**

Claims 40, 41, 44, 46, 47 and 51-58 have been rejected under 35 U.S.C. § 103 as allegedly unpatentable over Alloway et al. (WO 94/19017) in view of Berkner (WO 90/01550). These grounds for rejection have been previously addressed such that the rejection was once withdrawn. However, the rejection was reinstated upon reinterpretation of the claims. The Office has alleged that recitation of all or part of an antibody directed against a tumor or an epitope specific for an infectious and pathogenic organism does not distinguish the generic "part" of the antibody from the Alloway publication. This rejection is respectfully traversed.

The Office has asserted that Alloway publication teaches that CD4 extracellular domains can be fused to the constant domain regions of an antibody. The Office has proposed to interpret claim 40 to mean that the part of an antibody recited in the claim might be a part that is common to all antibodies of a given type, including the constant domain regions apparently taught by the Alloway publication. Applicant's prior amendment substituted "capable of binding" for "directed against" to more clearly express that the recited antibody or part of an antibody must be capable of recognizing the recited target. In the present Office Action, the Office has taken the position that the recited "part of an antibody capable of recognizing a tumor antigen or an epitope specific for an infectious and pathogenic organism" could be a single amino acid present in an antibody. Applicant respectfully submits that such a strained construction is unreasonable and clearly contrary to the readily

apparent intended meaning of the claim language as one skilled in the art would understand it.

Without agreeing with the alleged basis of the rejection, claim 40 has been amended to describe the claimed subject matter in a manner so as to prevent a construction that is contrary to the clearly intended meaning of the claim. This amendment to claim 40 is not intended to limit or narrow the scope of the claim or any element recited therein. The strained interpretation of claim 40 proposed by the Office has been precluded by the present amendment. As discussed previously, claims 44, 57 and 58 have been canceled without prejudice or disclaimer. Therefore, for at least the reasons presented, *infra*, and those previously presented on the record, the rejection cannot be properly applied to the present claims.

In particular, the constant regions of the chimeric protein described by the Alloway publication are added to increase the half-life of the CD4 molecule. *See*, Alloway at page 3, line 34 to page 4, line 2. The immunoglobulin constant region parts of the chimeras that the Alloway publication describes could not reasonably be considered directed against a tumor or an epitope specific for an infectious and pathogenic organism. Contrary to the teaching of the Alloway publication, the all or part of an antibody recited in claim 40 is explicitly described as being capable of recognizing a tumor antigen or an epitope specific for an infectious and pathogenic organism. The Berkner publication fails to remedy the serious deficiencies of the Alloway publication.

The combination of the Alloway publication and the Berkner publication fails to teach every element of the claimed invention and further provides no motivation to combine the references and to modify the teachings thereof in a manner that would lead one to the claimed invention as required for a *prima facie* case of obviousness. *See* MPEP § 2143. Since the

combination of references as cited by the Office Action fails to establish a proper *prima facie* case of obviousness, this rejection is respectfully requested to be withdrawn.

### **Conclusion**

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

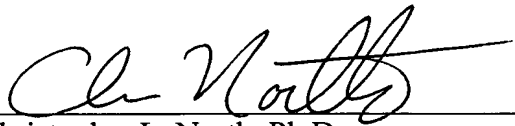
In the event that there are any questions relating to this Amendment and Reply, or the application in general, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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By: \_\_\_\_\_

  
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